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Remarks

The Specification has been amended to include an abstract in compliance with Examiner's request and 37 C.F.R. 1.72(b).

The Specification has been amended to comply with the Examiner's request that the claim to priority under 35 U.S.C. 371 be more fully detailed in the parent history.

Claims 1-17 currently stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Specifically, proviso a) of the general formula lacked a semicolon between conditions 2 and 3, and is considered unclear as to the whether the four recited conditions are dependent or independent relative to one another. Claims 1, 2, 4, and 5 have been amended to add the missing semicolon. It is also noted that the term "or" between conditions 3 and 4 of proviso a) clearly define the four conditions as independent of each other, such that any one or more of said conditions being present nullifies the proviso a).

Claim 3 (and presumably Claim 6 dependent thereon) currently stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully disagree with the Examiner's characterization of this type of claim, but in an effort to progress the prosecution of the case to issuance, Applicants have cancelled Claims 3 and 6 to obviate the rejection.

Claims 1, 2, 5, 8, and 11-17 currently stand rejected under 35 U.S.C. 103(a), as being obvious over Hartog (EP 0 189 012). Applicants respectfully traverse. The presently claimed compounds are new and non-obvious 5-HT<sub>2C</sub> agonists and therefore are beneficial for treating disorders modulated by this specific receptor subclass. It is abundantly clear from the literature that the 5-HT<sub>2C</sub> receptor has not been associated with psychoses, aggression, fear, or analgetic activity. (See for example Veenstra-VanderWeele et al., European Journal of Pharmacology, vol. 410, pg. 165-181, showing a tracking of aggressive behavior with 5-HT<sub>1B</sub> receptors, but not 5-HT<sub>2C</sub> receptors; and Fitzgerald and Ennis, Annual Reports in Medicinal Chemistry, Vol. 37, pg. 21-30, reviewing the pharmacology and therapeutic involvement of 5-HT<sub>2C</sub> receptors with the notable absence of any inference of the treatment of aggression.) As such Hartog does not teach or suggest anything regarding compounds

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having 5-HT<sub>2C</sub> activity or compounds that would be useful in the treatment of obesity, obsessive-compulsive disorder, or anxiety. Therefore, the presently claimed compounds are in truth novel and non-obvious over Hartog and any other references known to Applicants. Withdrawal of the rejection is respectfully requested.

Though the 5-HT<sub>2C</sub> receptor may be involved in some types of depression, such a wide array of mechanisms and cross-interactions have been implicated in depression that teachings of compounds for one mechanism for depression can not be presumed to teach anything about compounds directed toward another mechanism for depression. Furthermore, Hartog does not provide any indication or teach how one would determine whether the compounds disclosed in there would in fact have any affect on any mechanism of depression. Hartog only assays for modulation of aggressive behavior and analgesic activity. Neither of these activities has been associated with depression or with the presently considered 5-HT<sub>2C</sub> pharmacology. It is therefore submitted that Hartog does not teach or suggest anything regarding depression, let alone 5-HT<sub>2C</sub> mediated depression or any other 5-HT<sub>2C</sub> mediated disorder. In spite of these valid arguments, and in an effort to progress the present application to allowance, unless the Examiner withdraws the rejection with regards to the treatment of depression, Applicants opt to cancel Claims 5 and 8 to obviate the rejection as in relates to the treatment of depression with the presently claimed compounds.

Claims 1-17 currently stand rejected under obviousness-type double patenting over commonly assigned U.S. Patent No. 6,638,936. As stated by the Examiner, the whole basis for non-statutory obviousness-type double patenting doctrine is "to prevent the unjustified or improper timewise extension of the 'right to exclude' granted by a patent and to prevent possible harassment by multiple assignees." The referenced '936 patent and the present application clearly do not claim the same compounds. In fact, the two compounds claimed in the '936 patent are specifically excluded from the present application. Furthermore, both the '936 patent and the present application have the same earliest priority date, the same PCT filing date, and the same U.S. national stage filing date: the applications will have the same expiration dates save for any justified term restoration granted by the Patent Office for delay in prosecution of present application. Furthermore, in spite of the assertions in the office action, it is fundamental that the chemical arts are not predictable and that even relatively small differences in the number and type of substitutions, as for example, methylation

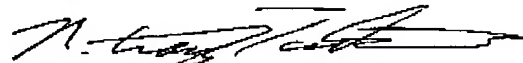
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patterns, are expected to result in differences in characteristics between compounds. Therefore, it is submitted that 1) the genus of presently claimed compounds are in fact non-obvious relative to the two compounds claimed in the '936 patent; 2) that there is no opportunity for an improper timewise extension of patent term for a patent granted on the present application beyond the term of the '936 patent; and 3) that there could be no harassment between potential future assignees of the two patents because the claimed compounds are undeniably distinct in the patent and the present application such that there is no legal, logical, or ethical reason for why they should not be separately assignable. As such, withdrawal of the double patenting rejection is respectfully requested.

It is believed that all objections and rejections have been overcome or obviated. It is believed that all issues have been addressed and that the Claims are now in condition for allowance. A timely Notice of Allowance is requested.

Respectfully submitted,



R. Craig Tucker  
Attorney for Applicants  
Registration No. 45,165  
Phone: 317-433-9829

Eli Lilly and Company  
Patent Division  
P.O. Box 6288  
Indianapolis, Indiana 46206-6288

